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August 12, 2011

Thomas E. Montgomery, Esq.
County Counsel
County Administration Center
1600 Pacific Highway, Room 355
San Diego, CA 92101

Re: Grant to Green Oak Ranch

Dear Mr. Montgomery:

I understand that on August 2, 2011, the Board of Supervisors retroactively authorized Green Oak Ranch to spend approximately \$21,000 in County funds on capital improvements to its camp facilities, including reroofing cabins, retrofitting a pool drain and chemical system, and replacing a fire-suppression system. I also understand Green Oak Ranch describes itself as a church and a "healing community under the Lordship of Jesus Christ."

According to *San Diego CityBeat*, you stated that the grant "doesn't support religious purposes because religious activities do not occur in pools, cabins and food-service areas." Regardless of whether that position is viable under federal law, it contradicts California law, even assuming that the funds do not directly support religious activities.

The California Constitution contains strict limits on governmental support of religious organizations, which are enforced independently of federal law. *Locke v. Davey*, 540 U.S. 712 (2004). Specifically, Article XVI, section 5 ("No Aid Clause") of the California Constitution provides in relevant part, "Neither the Legislature, nor any county ... shall ever make an appropriation, or pay from any public fund whatever, or grant anything to or in aid of any religious sect, church, creed, or sectarian purpose, or help to support or sustain any school, college, university, hospital, or other institution controlled by any religious creed, church, or sectarian denomination whatever ..."

The No Aid Clause thus prohibits direct government grants to any religious organization, even if the aid is purportedly for non-religious uses. This principle is long settled. Almost 90 years ago, the California Court of Appeal held that the No Aid Clause (then contained in Art. IV,

§ 30) prohibited the state from appropriating money to restore the San Diego Mission, owned by the Roman Catholic Church, regardless of the purpose of the grant. *Frohliger v. Richardson*, 63 Cal.App. 209, 214-17 (1923). The same principle applies here. Under the No Aid Clause, the County may not give money to Green Oak Ranch for capital improvements or any other purpose. Cf. *Los Angeles County v. Hollinger*, 221 Cal.App.2d 154 (1963) (No Aid Clause prohibited county from directly funding documentary film of Christmas parade).

More recently, the California Supreme Court held that it violated the No Aid Clause to provide secular textbooks to students in religious schools. As the court held, “[b]y providing textbooks at public expense, the loan program appropriates money to advance the educational function of the school,” which is primarily religious, though the books themselves may be secular. *California Teachers Assoc. v. Riles*, 29 Cal.3d 794, 811 (1981).

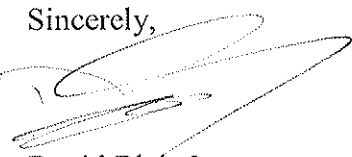
The No Aid Clause does not confine its “prohibition against financing sectarian schools in whole or in part to support for their religious teaching function, as distinguished from secular instruction.” *Riles*, 29 Cal.3d at 812. The same is true for Green Oak Ranch. “Direct financial benefit may not be given to a particular religion, even where the purpose may be to preserve what is admittedly educational or historical,” and “a government entity” may not “lend financial assistance to a religion in such a way as to lessen its financial burdens.” *Paulson v. Abdelnour*, 145 Cal.App.4th 400, 435 (2006) (citing *Frohliger* and *Riles*).

In addition to *Frohliger*, this case is controlled by *Riles*. If the state violated the No Aid Clause by providing secular textbooks to students at a religious school, the County is violating the No Aid Clause by allowing Green Oak Ranch to use County funds for capital improvements, even assuming the improvements serve non-religious purposes.

This is not a case about indirect conduit financing involving no government funds. Cf. *California Statewide Communities Development Authority v. All Persons Interested*, 40 Cal.4th 788, 801 (2007) (given certain conditions, No Aid Clause allowed religious schools to qualify for conduit financing through tax-exempt bonds bought by private investors, if there is no “financial burden on the government” because schools pay all costs, repay all capital and interest, and investors have no recourse against the state). This is a case about unlawful County funding of a church, in direct violation of the No Aid Clause.

To avoid litigation if possible, I ask that the County take appropriate action to ensure compliance with the No Aid Clause. Please feel free to call me if you have any questions.

Sincerely,



David Blair-Loy
Legal Director